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PATENT
4481-028

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Bernhard DEHMER Conf.: 3016
Serial No.: 09/672,038 Art Unit: 3753
Filed: September 29, 2000 Examiner: J. Fox
For: VALVE FOR LIQUID SEPARATION

LETTER TO THE ASSISTANT COMMISSIONER OF PATENTS

Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

April 11, 2005

Sir:

Counsel for Applicant urgently requests action in connection with the above-identified application.

Pursuant to a Decision on Petition rendered April 15, 2003, the finality of an Office Action mailed November 12, 2002, was withdrawn. Applicant's response to that Office Action filed February 12, 2003, was entered, and the application was forwarded to the Examiner for action not inconsistent with the Decision.

Applicant has yet to receive an Office Action from the assigned Examiner, John Fox. Status Inquiries filed July 17, 2003, and September 8, 2004, were not answered. On March 4, 2005, counsel for Applicants directed his staff to contact Examiner Scherbel, former supervisor of Examiner Fox. Examiner Scherbel said he would tell Examiner Fox to work on the application and instructed counsel's assistant "not to worry" until the end of the next week.

Serial No. 09/672,038
Docket No. 4481-028
Page 2

In the absence of an Office Action, on March 17, 2005, counsel's staff telephoned Examiner Fox, who said he was working on the application and that counsel would receive an Office Action within a week.

When an Office Action was still not forthcoming, counsel's staff again telephoned Examiner Fox on April 5, 2005. Apologizing, Examiner Fox said, in fact, he had not been working on this application, but had confused it with another case. Examiner Fox said he was focusing on two re-examinations which, he had been told, were to take priority over all his other work. However, Examiner Fox said he should be able to provide an Office Action "in the next biweek."

Counsel for Applicant can appreciate the time-consuming nature of Examiners' work on re-examination applications. However, Applicant has been waiting for an Office Action for almost two years. We consider this unacceptable and believe the USPTO should also consider this unacceptable.

On January 28, 2002, Examiner Fox issued a final rejection, in which the sole ground of rejection was for indefiniteness under 35 U.S.C. §112, second paragraph. An Amendment filed April 29, 2002, was met with an Advisory Action on March 14, 2002; and Applicant submitted a Notice of Appeal and Appeal Brief on May 28, 2002, and July 29, 2002, respectively.

In response to the Brief, a new Office Action was mailed on November 12, 2002. In the November 12 Office Action, Examiner Fox objected to a previously filed substitute specification, required restriction between two groups of claims, rejected claims as being indefinite and/or for lack of enablement, rejected claims under 35 U.S.C. §102(b) as being anticipated by a newly cited reference, and rejected claims under 35 U.S.C. §103(a) over references that were previously of record, but had never been applied against the claims of the present application. Not only did Mr. Fox, a

Serial No. 09/672,038
Docket No. 4481-028
Page 3

Primary Examiner, make this new Office Action final, he also alleged Applicant's amendment--which consisted of correcting a syntax error by adding the word "and"--necessitated the new grounds of rejection.

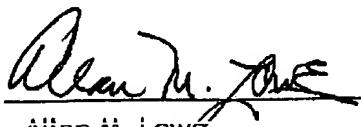
Accordingly, Applicant filed a combined petition to the Commissioner on November 25, 2002, requesting withdrawal of the finality of the November 12 Office Action and withdrawal of the restriction requirement. Subsequently, on February 12, 2003, an Amendment in response to the November 12 Office Action was also filed.

Applicant's request to withdraw the finality of the previous Office Action was granted in the Decision on Petition rendered April 15, 2003. Since that time, there has been no written communication from the USPTO in response to Applicant's written inquiries. Essentially, the application has been held hostage.

Given the totality of circumstances, counsel for Applicant reluctantly takes the step of informing the Assistant Commissioner for Patents of the treatment this application has received from the Examining corps and, on behalf of Applicant, urgently requests the Assistant Commissioner to take appropriate action, *inter alia*, to cause an Office Action to be issued.

Respectfully submitted,
LOWE HAUPTMAN & BERNER, LLP

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